

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF ILLINOIS

LERON WILBORN,)
Plaintiff,)
vs.) Case No. 10-cv-423-JPG
DONALD GAETZ,)
Defendant.)

MEMORANDUM AND ORDER

This matter comes before the Court on Plaintiff Leron Wilborn's *pro se* Motion for Leave to Proceed *in Forma Pauperis* (Doc. 11)

A federal court may permit an indigent party to proceed without pre-payment of fees. 28 U.S.C. § 1915(a)(1) (2006). Nevertheless, a court can deny a qualified plaintiff leave to file *in forma pauperis* or can dismiss a case if the action is clearly frivolous or malicious. 28 U.S.C. § 1915(e)(2)(B)(i). The test for determining if an action is frivolous or without merit is whether the plaintiff can make a rational argument on the law or facts in support of the claim. *Neitzke v. Williams*, 490 U.S. 319, 325 (1989); *Corgain v. Miller*, 708 F.2d 1241, 1247 (7th Cir. 1983). When assessing a petition to proceed *in forma pauperis*, a district court should inquire into the merits of the petitioner's claims, and if the court finds them to be frivolous, it should deny leave to proceed *in forma pauperis*. *Lucien v. Roegner*, 682 F.2d 625, 626 (7th Cir. 1982).

Here, the Court is satisfied from Wilborn's affidavit that he is indigent. Further, the Court does not believe that this action is frivolous or malicious. Accordingly, the Court **GRANTS** the instant motion (Doc. 11).

IT IS SO ORDERED.
DATED: October 20, 2010

s/ J. Phil Gilbert
J. PHIL GILBERT
DISTRICT JUDGE